they liked, but had better come into the jury-box the next morning. They gave no sealed verdict because they had not agreed on all the issues, but they returned to the jury-box next morning at the opening of the court. Their names were not called, but it was assumed both by judge and counsel that it was the same jury, and they so spoke and were interrogated. A juror stated that they had not been able to agree. Counsel for the plaintiff asked the judge to ask the jury whether they agreed whether the cause of complaint in the action was a nuisance or not. Further conversation then followed between counsel and judge, which evidently suggested the next statement from the jury, namely, that they were agreed as to the diphtheria, but that it was not caused by the nuisance. The judge then asking for the record, counsel for the plaintiff objected that the finding must be a whole finding or none at all. The judge did not assent, and thereupon counsel for the plaintiff submitted that, in view of the apparent disagreement upon the main issue, the jury should be discharged. The judge did not assent to this, however, but put the matter formally to the jury, and recorded that the jury found that the diphtheria was not caused by any nuisance created by the defendants.

Held, that any irregularities in the course of the proceedings, such as the dispersing of the jury over night and the omission to identify the constituents of the jury in the morning, were waived by the conduct of the plaintiff's counsel. They had been treated on all hands as not discharged, and as competent to deal with the case, and the issue on which the jury had agreed must be recorded as finally disposed of by their verdict, so as not to be opened on the farther litigation of the case.

Ritchie, Q.C., and *Boultbee*, Q.C., for the plaintiff.

Piggott, Q.C., for the defendants.

BOYD, C.] [NOV. 12.

LANGLOIS *v.* LESPERANCE.

Deed—Habendum repugnant to the grant.

Grant of lands to A. and his heirs forever, *habendum* to A. and his wife for their natural lives and the life of the survivor, and from and after the death of both of their lawful heirs and assigns.

Held, A. took in fee simple to the exclusion of the wife.

T. Mercer Morton for the plaintiff.

A. R. Bartlett for the defendant.

[NOV. 28.

RE SUSKEY & THE CORPORATION OF THE TOWNSHIP OF ROMNEY.

By-law—Amending former by-law—Township council—Power to pass 55 Vict., c. 42, s. 573 (O.).

The power to amend a by-law given under s. 573, Consolidated Municipal Act, 1892, which does not provide sufficient means "fully to carry out the intention thereof," means the completion of the work so as to make it efficient,